

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY WRIGHT,

Defendant-Appellant.

UNPUBLISHED

February 23, 2001

No. 222392

Kalamazoo Circuit Court

LC No. 99-000215-FH

Before: Talbot, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was found guilty of two counts of delivery of a controlled substance less than 50 grams, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). Defendant appeals his consecutive sentences of two to twenty years' imprisonment on each count. We affirm.

Generally, we review a sentencing decision for an abuse of discretion. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990).

Defendant contends that the trial court abused its discretion by failing to either apply or consider the legislative sentencing guidelines. Defendant argues that his sentencing range under those guidelines would have been zero to nine months' imprisonment, whereas the sentencing range under the judicial sentencing guidelines range was twelve to thirty-six months' imprisonment. Each of the instant offenses occurred during 1998. We have held, however, that the legislative sentencing guidelines "have no bearing" on sentences for crimes occurring before January 1, 1999. *People v Oliver*, 242 Mich App 92, 99; 617 NW2d 721 (2000).

The gravamen of defendant's argument is that he is entitled to sentencing under the legislative sentencing guidelines because they would have an ameliorative effect. Nevertheless, we have rejected that argument, as well. *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). In *Reynolds*, we opined that the Legislature "intended for the Supreme Court's guidelines to continue to apply to felonies committed before January 1, 1999." *Id.*, 253-254. Along the same lines, defendant seeks to rely on our Supreme Court's ruling that a defendant could benefit from an ameliorative legislative amendment occurring between the commission of a crime and the date of sentencing. *People v Schultz*, 435 Mich 517, 530-531; 460 NW2d 505 (1990). However, our Supreme Court ruled that a defendant is entitled to the benefit of an

ameliorative amendatory act where there is an absence of a contrary statement of legislative intent. *Id.* Having already ruled that the legislative intent was for the Supreme Court's guidelines to apply to crimes committed before January 1, 1999, the circumstances surrounding the legislative sentencing guidelines are distinguishable from *Schultz*. Accordingly, the trial court did not abuse its discretion by failing to consider the legislative sentencing guidelines.

Finally, defendant contends that his sentence was disproportionate. As noted above, defendant was sentenced within the judicial sentencing guideline range. Where a sentence is within the guidelines range it is "presumptively proportionate," although an abuse of discretion may still be shown under "unusual circumstances." *People v Piotrowski*, 211 Mich App 527, 532; 536 NW2d 293 (1995). Defendant notes that no evidence was introduced establishing that he was armed, and that he merely sold one rock of cocaine to an individual he knew to use drugs (twice). These circumstances are not sufficiently unusual for us to disturb the presumption of proportionality. Consequently, we conclude that the trial court did not abuse its discretion in sentencing defendant.

Affirmed.

/s/ Michael J. Talbot

/s/ David H. Sawyer

/s/ Jane E. Markey